## **United States Department of Labor Employees' Compensation Appeals Board**

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N.L., Appellant	
and	) Docket No. 17-1058 ) Issued: February 8, 2018
U.S. POSTAL SERVICE, POST OFFICE, Syracuse, NY, Employer	) issued: February 6, 2016 ) _ )
Appearances: Kimberly Slimbaugh, Esq., for the appellant <sup>1</sup> Office of Solicitor, for the Director	Case Submitted on the Record

## **ORDER REMANDING CASE**

## Before:

CHRISTOPHER J. GODFREY, Chief Judge PATRICIA H. FITZGERALD, Deputy Chief Judge ALEC J. KOROMILAS, Alternate Judge

On April 19, 2017 appellant, through counsel, filed a timely appeal from an October 27, 2016 merit decision of the Office of Workers' Compensation Programs (OWCP). The Board docketed the appeal as No. 17-1058.

The Board has duly considered the matter and finds that the case must be remanded to OWCP. On September 26, 2016 OWCP issued a preliminary notice of its determination that appellant received an overpayment of compensation in the amount of \$13,898.98 for the period November 9 to July 23, 2016. It also informed her of its preliminary determination that she was at fault in creating the overpayment. OWCP provided appellant with an overpayment recovery questionnaire (Form OWCP-20). It notified her that, within 30 days of the date of the letter, she could request a telephone conference, a final decision based on the written evidence, or a prerecoupment hearing. In an October 27, 2016 decision, OWCP finalized its determination that appellant received an overpayment of compensation in the amount of \$13,898.98, that she was at

<sup>&</sup>lt;sup>1</sup> In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. Id. An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. Id.; see also 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

fault in creating the overpayment, and that she was therefore not entitled to waiver. It indicated that she had not responded to its preliminary notice of overpayment. A review of the record, however, demonstrates that on October 25, 2016 OWCP received appellant's request for a telephone conference and a completed overpayment recovery questionnaire (Form OWCP-20).

It is well established that OWCP must review all evidence submitted by a claimant and received by OWCP prior to issuance of its final decision.<sup>2</sup> As the Board's decisions are final as to the subject matter appealed, it is crucial that all evidence relevant to the subject matter of the claim which was properly submitted to OWCP prior to the time of issuance of its final decision be addressed by OWCP.<sup>3</sup>

OWCP is required to follow certain procedures in overpayment cases. Section 10.431 of FECA's implementing regulations provides that, before seeking recovery of an overpayment, OWCP shall advise a claimant in writing that the overpayment exists and the amount of the overpayment.<sup>4</sup> The written notification must include a preliminary finding regarding whether the individual was at fault in the creation of the overpayment.<sup>5</sup> Additionally, OWCP is obliged to advise the individual of her right to inspect and copy the government records relating to the overpayment.<sup>6</sup> Lastly, the preliminary notice must inform the individual of her right to challenge the fact or amount of the overpayment, the right to contest the preliminary finding of fault in the creation of the overpayment, if applicable, and the right to request a waiver of recovery of the overpayment.<sup>7</sup>

As noted above, on October 25, 2016, appellant made a timely request for a telephone conference and submitted an overpayment recovery questionnaire. OWCP, however, did not conduct a telephone conference before issuing its final overpayment decision. Therefore, appellant was not provided the opportunity to provide testimonial evidence regarding the alleged overpayment.<sup>8</sup>

Accordingly, the case is not in posture for a decision and the case will be remanded for a timely proper response to appellant's request for a telephone conference. Following this and such other development as deemed necessary, OWCP shall issue an appropriate decision.

<sup>&</sup>lt;sup>2</sup> William A. Couch, 41 ECAB 548 (1990).

 $<sup>^3</sup>$  Id.

<sup>&</sup>lt;sup>4</sup> 20 C.F.R. § 10.431(a).

<sup>&</sup>lt;sup>5</sup> *Id.* at § 10.431(b).

<sup>&</sup>lt;sup>6</sup> *Id.* at § 10.431(c).

<sup>&</sup>lt;sup>7</sup> *Id.* at 10.431(d).

<sup>&</sup>lt;sup>8</sup> See Jimmie R. Fornero, Docket No. 99-0875 (issued January 16, 2001) (remanding the case to OWCP to consider the claimant's request for a telephone conference as he was not provided the opportunity to present testimonial evidence regarding his request for waiver); see also Scherrie L. Stanley, 53 ECAB 433 (2002).

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated October 27, 2016 is set aside and the case is remanded for further action consistent with this order of the Board.

Issued: February 8, 2018

Washington, DC

Christopher J. Godfrey, Chief Judge Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Deputy Chief Judge Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge Employees' Compensation Appeals Board